

## **REMARKS**

### **Rejection of Claims 1, 3, and 4 under 35 U.S.C. §102(b) over Hawks, Jr.**

Claims 1, 3, and 4 remain rejected as anticipated by the Hawks, Jr. reference. The Examiner considers Hawks to disclose the invention as claimed, including a fluid reservoir 54, misting nozzle 38, conduit (28, 136, 536), a pump (70, 500), an agitator (144, 514), a controller, a pressure switch, and a remote control (36).

The Examiner has maintained his rejection of the claims over Applicant's prior amendment of the claims. Applicant submits that the present additional amendment of claims further clarifies and distinguishes the cited art.

The claimed invention is different both structurally and operationally from the device described in Hawks. Additionally, Hawks simply does not disclose or suggest several of the recited elements in claims 1, 3 and 4.

### **Hawks does not disclose or suggest the recited programmable digital processor**

Claims 1, 3, and 4, as currently amended, recite a controller having a programmable digital processor. Hawks' spraying system lacks this element. Hawks instead has only a pump that itself incorporates a sensor and pressure switch that shuts off pressure in the event that output pressure on the output side of the pump has reached a predetermined value. See Hawks, col. 6, lines 27-41.

Even if the pump switch of Hawks were to be considered a 'controller,' as the Examiner has, it does not incorporate a "digital programmable processor", as recited in the claims at issue. There is no indication in Hawks that the pressure switch/sensor of its pump is "programmable" in any manner. The only aspect of the pump that is mentioned as being adjustable is the output pressure of the pump (col. 6, lines 27-30).

Hawks does not disclose or suggest the recited timer element or a timed cycle

Claims 1, 3, and 4 recite a mosquito misting system with a controller having a timer and wherein the pump and the agitator are operated in accordance with preprogrammed parameters that include a timed cycle. The amendment is fully supported by the specification, at least at p. 12, lines 17-19 and Figure 4. The timer element is entirely missing in Hawks, and nowhere suggested by it. In fact, Hawks device is intended to be used as a handheld sprayer, and, thus, is not operated in a timed cycle. Hawks' spraying system is instead selectively actuated by an operator who manually compresses a trigger 36. See Hawks', col. 4, lines 56-58. Hawks' device is incapable of being operated in a timed cycle since it lacks any mechanism at all for doing so. In fact, operating Hawks' device in a timed cycle makes no sense, as the operator of the device will activate the sprayer of the device upon demand using the spray wand.

Hawks does not disclose or suggest that the controller selectively operates the agitator

As amended herein, Claims 1, 3, and 4 recite a misting system wherein the controller operates the agitator in accordance with preprogrammed parameters that include a timer cycle for operation. This amendment is supported by the specification at least at p. 12, lines 11-13 and p. 14, lines 19-p. 15, line 4.

Even if the pump switch in Hawks' arrangement were considered to be a 'controller,' it does not operate the agitator in any manner. The agitator (agitation hose 144) is instead operated by a separate handle 142 that manually actuates bypass valve 140 to be opened or closed. See Hawks, col. 6, lines 3-14.

Hawks does not disclose or suggest the agitator element

Applicant maintains that Hawks is missing the claimed agitator element. Claims 1, 3 and 4, as amended herein, recite “an agitator drawing outside air into the fluid reservoir and mixing fluid insecticide within the reservoir.” Applicant’s present amendment eliminates the term “for,” thereby clarifying that the recitation is not merely one of intended use and, thus, differentiates the device shown in Hawks and its described method of operation with dry insecticides. Applicant has also amended claim 1 to clarify that the fluid reservoir contains fluid insecticide rather than being “for” containing fluid insecticide.

The Examiner argued previously that the dry flowable insecticides shown in the Hawks reference are encompassed within the claim term “fluid.” Applicant disagrees and urges the Examiner to reconsider his conclusion. Applicant submits that by construing “fluid” to include dry insecticides, the Examiner is not affording that term its ordinary and accepted meaning. See MPEP, 2111.01; *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004) (“Ordinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say.”). The Examiner’s own proffered definition from The American Heritage Dictionary of the English Language (1992) defines a “fluid” as “. . . a liquid or a gas.” Dry insecticide particles are, of course, neither a liquid nor a gas. They are solids.

According to the American Heritage definition offered by the Examiner, a “fluid” is also defined as “[a] continuous, amorphous substance whose molecules move freely past one another and that has the tendency to assume the shape of its container.” Applicant submits that dry insecticide particles would not meet this requirement of the definition of “fluid” either. The term “amorphous” means:

1. Lacking definite form; shapeless. See synonyms at shapeless. 2. Of no particular type; anomalous. 3. Lacking organization; formless. 4. Lacking distinct crystalline structure.

The American Heritage Dictionary of the English Language, 4th Ed. (2000). Applicant submits that dry insecticide particles cannot be considered “amorphous” because they do have a distinct crystalline and particlized structure. Hawks explains that the term “dry flowables,” as used in his patent “includes boric acid dust, insecticidal dust, silica aerogel, antibiotic powder, powder baits and other dusts and powders.” Hawks, col. 3, lines 33-36. There is no evidence of record that the molecules of a dry insecticide move freely past one another or that the dry insecticide has a tendency to assume the shape of its container.

Hawks cannot anticipate the claimed invention because it is missing numerous elements that are recited in the claims at issue. In addition, there are significant differences between the claimed invention and the device shown in Hawks. Applicant respectfully requests that the Examiner withdraw the rejection.

**Rejection of Claims 2, 11-16, and 20 Under 35 U.S.C. §103(a) over Hawks, Jr. and Khurgin**

Claims 2, 11-16, and 20 stand rejected for obviousness over a combination of Hawks, Jr. and the Khurgin reference. The Examiner considers Hawks to disclose each of the recited elements of these claims except for the use of a plurality of float level sensors. He considers Khurgin, however, to teach the use of multiple float level sensors. He, therefore, concludes that it would have been obvious to one of skill in the art to provide a plurality of float level sensors with the device of Hawks in order to sense the level of liquid in Hawks’ device.

Applicant traverses the rejection. First, Applicant incorporates herein the arguments made previously regarding the inability of Hawks to disclose or suggest the subject matter

of claim 1. Claim 2 should be allowable at least as depending from an allowable base claim.

Claims 11-16 and 20, as amended herein, should be allowable because at least the recited timer and agitator elements as well as the claimed timed cycle for pump operation recited therein are not disclosed or suggested by Hawks.

Applicant reasserts its arguments made previously as to why it would be unobvious to combine Hawks with Khurgin. These arguments were not addressed at all in the February 25<sup>th</sup> final action.

#### **Rejection of Claims 5-9 Under 35 U.S.C. §103(a) over Hawks, Jr. and Dodds**

Claims 5-9 stand rejected as obvious in view of Hawks and the Dodds reference. The Examiner considers Hawks to disclose the claimed invention with the exception of the claimed transmitter for transmission of selected information relating to the system to a remote monitoring location. He notes that Dodds describes a transmitter 115 to send various information and data. He concludes that it would have been obvious to one of skill in the art to have provided Hawks' sprayer device with a transmitter, as taught by Dodds, to remotely collect data.

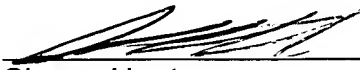
Applicant traverses the rejection. First, claims 5-9 should be allowable at least as depending from an allowable claim 1. Applicant further reurges the unrefuted arguments it made previously with regard to the unobviousness of combining Hawks and Dodds. Applicant submits that one of skill in the art would not be motivated to add a transmitter and associated components to Hawks' device since that would defeat a clearly stated intent of Hawks' invention, which is to provide reduced manufacturing costs.

**Rejection of Claims 17-19 Under 35 U.S.C. §103(a) over Hawks, Jr., Khurgin and Dodds**

Claims 17-19 stand rejected for obviousness over a combination of Hawks, Khurgin, and Dodds. Application traverses the rejection. As outlined above, Hawks fails to disclose the elements of claim 11, from which these claims depend. Further, Dodds is not properly combinable with Hawks.

Respectfully submitted,

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